

C O P Y

*in opinion*

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May 16, 1958

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Kenneth L. Cowan, Director  
Division of Inheritance Taxes  
State Tax Commission  
Concord, New Hampshire

CONCORD, N.H.

Re: Liability of Banks for Tax on Released Joint Accounts

Dear Mr. Cowan:

In a letter of May 2, 1958, you inquired if the prohibition of RSA 86:73 applies to a savings bank which, having in its custody or control a deposit standing jointly in the names of a resident decedent and a nonresident and being unaware of the death of the decedent, pays out such deposit to the surviving joint tenant without the written consent of the State Treasurer or of your office. We reply in the affirmative.

The facts as presented show that the decedent, a resident of New Hampshire, had held a savings account in a savings bank in this State in joint tenancy with a resident of Massachusetts. The New Hampshire resident died, and thereafter the surviving joint tenant drew from the bank the balance in the account. In making payment of the balance to the surviving joint tenant the bank was unaware of the fact that the New Hampshire resident had died. No official consent was ever given to the release of the funds to the surviving joint tenant.

The language of RSA 86:73 is positive and unequivocal. The prohibition against making payment in the case of certain property jointly held to other than a resident executor or administrator of the estate of the decedent except with your consent or that of the State Treasurer is unconditional. The statutory directive is violated when the acts constituting payment are performed, without regard to whether or not the paying institution was aware of the fact that the New Hampshire joint tenant had died.

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Mr. Kenneth L. Cowan

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The section cited may be contrasted with the succeeding section, RSA 86:74. The duty imposed in this section does not arise until the institution having custody or control of the property learns of the death of the resident joint holder. The language used to effect this condition is clear; a demonstration, if one be needed, that the Legislature is aware of means appropriate to express the purpose that knowledge is a condition of responsibility.

It is our understanding that your office in the administration of RSA 86:73 over a long period of time has placed the same interpretation upon it as we express herein. It is noted that prior to 1957 the penalty prescribed for violation was up to \$1,000, and in addition to this the paying institution was held liable for the tax, interest and penalties arising under RSA 86 from the passing of the interests in the jointly held property. By Laws 1957, c. 22 (now RSA 86:78 (supp) ) the monetary penalty was removed, and now the only liability attaching to wrongful release is an amount equal to the tax and interest thereon. The removal of the monetary penalty is entirely consistent, we believe, with legislative approval of the position which your office had adopted, coupled with a recognition of a monetary penalty in the absence of knowledge of facts imposing a duty is extremely harsh.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

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